

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
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	)	
	)	
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HARVEST PREPARATORY SCHOOL,	)	File No. SLD 223975
YUMA, AZ	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	CC Docket No. 96-45

**REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE  
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY  
HARVEST PREPARATORY SCHOOL, YUMA, AZ**

## **I. INTRODUCTION**

1. The Harvest Preparatory School, (the “School”) appeals the decision of the Universal Service Administrative Company (“USAC”) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denial of request for Service Delivery Extension, to wit, the request was made after the deadline to submit said request for extension. The School believes that special circumstances exist to justify a waiver of the Commission’s rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
2. The School requests that the Commission review the decision of USAC denying the request for Service Delivery Extension due to a clerical error and confusing procedures for requesting said extension on the USAC website.

## **II. BACKGROUND**

1. Harvest Preparatory School is a very small school located in Yuma, AZ and has limited staff available to oversee the implementation of the E-Rate processes and procedures. The school had an approved FCDL for 471 application number 486149 with six individual funding requests. The Form 486 was filed in a timely manner. The initial deadline for implementation was September 30, 2006. On July 31, 2006 the site’s Director of Programs submitted a request for Service Delivery Extension due to circumstances beyond the service provider’s control using the USAC website’s “Submit a

Question” process. In doing so, she indicated that she would like to submit an attachment with her request, and then proceeded to fill out the requested information on the site. The “Submit a Question” feature of USAC’s website as it relates to Service Delivery Extension requests is very confusing and does not seemingly allow for multiple requests to be made on the same approved Form 471. In order to try to accommodate this, the Director of Programs indicated one FRN (1349368) where required, and then submitted attachments on August 2, 2006 with what she thought were a list of the additional funding requests for which the request needed to be made. They are as follows: 1348538, 1349281, 1349304, 1349341 and 1349381. The Director of Programs submitted two attachments that she thought addressed all funding requests involved.

Unfortunately, she submitted two copies of the same letter that only addressed FRN 1349368. At this point, we contend that the reviewer of the request should have contacted the Director of Programs to verify that the information submitted was correct as there were two copies of the same document rather than two attachments with different information. The school received notification of approval of the Service Delivery Extension Request for FRN 1349368 which is the one FRN that was listed on the “Submit a Question” feature on 02/17/2007 (8 months after submission of the original request and after the original Service Delivery Deadline) and as part of the attachment(s), but there was no mention of the other five funding requests. Since the School did not receive any

communication from USAC that there may have been a problem with the electronic submission of the information despite three follow up case numbers (21-451796, 21-452827 and 21-558319) initiated by the School with the CSB prior to a decision by USAC, the intention and understanding was that all six requests were submitted in a timely manner using the “Submit a Question” feature on USAC’s website. Upon follow up after the decision was handed down, the School was told that the deadline to request an extension had passed. An immediate appeal was filed with USAC and was denied on the basis that USAC did not have complete documentation of the request for extension on the five remaining funding requests, though only they were aware of this fact.

2. The District was notified that USAC had denied the Service Delivery Extension Request. USAC stated that the deadline to request the extension had passed though the partial approval came after the deadline to request an extension had passed.

### **III. DECISIONS BY THE COMMISSION ON APPEALS**

1. As noted in the decision published in the *Bishop Perry Middle School, New Orleans, LA* appeal, SLD # 487170, the “Commission may waive any provision of its rules on its own motion and for good cause shown.” (47 C.F.R. §1.3.) Additionally, a “rule may be waived where the particular facts make strict compliance inconsistent with the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

2. In the Request for Waiver and Review filed by Great Rivers Education Cooperative File No. SLD-371294 decided on December 4, 2006, the Commission waived the deadline for Implementation Extension Request because,”... [The District] tried, in good faith, to comply in a timely manner with applicable Program rules...” In Great Rivers Education Cooperative, the Commission noted, “Had USAC...alerted Great Rivers of its mistake, Great Rivers would have had ample time to submit the Service Delivery Extension Request prior to the September 30 deadline.” Harvest Preparatory School contends that the circumstances described in Great Rivers are substantially similar to the circumstances that resulted in the denial of request for Service Delivery Extension described herein.

## DISCUSSION

1. The School believes that under the circumstances described above, and pursuant to the applicable rulings by the FCC, there is reason for the Commission to waive the deadline associated with request of Service Delivery Extension. Due to the confusing nature of the “Submit a Question” feature as it relates to Service Delivery Extension Requests and the lack of communication from USAC regarding the incomplete information submitted, the School believes that the Request for Waiver should be granted.

Further, the District believes that denial of this request does not “further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries.”

2. School relies on the decision in the Great Rivers Education Cooperative, appeal as cited above. In Great Rivers, “We find that the Appellants have demonstrated special circumstances to warrant an extension of the deadline to implement non-recurring services...” Harvest Preparatory School contends that substantially similar special circumstances exist in this instance as well.
3. School also relies on Bishop Perry Middle School, New Orleans, LA, the Commission stated as follows:

As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors. We find that the actions we take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program. The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In

sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

## **VI. CONCLUSION**

For the reasons discussed herein, the School respectfully requests the Commission grant the Request for Review and Waiver and Remand the case to USAC for further consideration pursuant to the E-rate rules.

All further contact should be directed to Kimberly Friends at [kfriends@csmgconsulting.com](mailto:kfriends@csmgconsulting.com).